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10 *United States Secretary of Labor*

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13
14 MARTIN J. WALSH, Secretary of Labor,
United States Department of Labor,

15 Plaintiff,

16 v.
17

18 CHE GARIBALDI dba TAQUERIA GARIBALDI,
a California corporation; EDUARDO
19 HERNANDEZ, an individual; HECTOR MANUAL
MARTINEZ GALINDO, an individual; and
20 ALEJANDRO RODRIGUEZ, an individual,

21 Defendants.
22

Case No. [Case Number]

**COMPLAINT TO RECOVER
AMOUNTS DUE UNDER THE FAIR
LABOR STANDARDS ACT**

INTRODUCTION

The Fair Labor Standards Act (“FLSA” or “Act”) requires that all employees are compensated full wages for all hours worked, including payment of overtime premiums for all hours worked in excess of forty in a workweek. Defendants operate restaurants in Sacramento and Placer counties in California, where their employees prepare and serve food, work as cashiers, and clean items and areas throughout the restaurants. Defendants have denied payment of the full lawful wages due to employees by willfully failing to accurately record hours worked; paying workers in cash for hours over forty to circumvent accurate pay and recordkeeping; denying employees of tip payments made; and impeding with the U.S. Department of Labor’s investigation of FLSA compliance. Defendants’ actions harm not only their own employees but also forthright employers who face unfair competition in the marketplace due to Defendants’ unlawful practices. The U.S. Secretary of Labor brings this case to remedy Defendants’ harms to employees and competitors, and to protect the public interest, which is threatened by blatant violations of federal law protecting wage earners.

NATURE OF THE ACTION

1. Plaintiff Martin J. Walsh, Secretary for the U.S. Department of Labor (“the Secretary”), is charged with enforcing the FLSA to eliminate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers[.]” 29 U.S.C. § 202(a). In bringing actions under the FLSA, the Secretary represents not only the interest of the individual employees affected by an employer’s violations of the law, but also the public interest, including the interests of employers whose ability to compete in compliance with the law is harmed by employers who deny employees overtime wages.

2. The Secretary brings this action under Section 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 *et al.*, to enjoin Defendants from violating the provisions of Sections 3, 7, 11, and 15 of the FLSA, 29 U.S.C. §§ 203, 207, 211, 215.

3. Under Section 16(c) of the FLSA, 29 U.S.C. § 216(c), the Secretary also seeks to recover unpaid overtime premiums from at least May 7, 2018 to the present (“Subject Period”) owed under the FLSA to Defendants’ employees, including those listed by name on the attached Exhibit

1 A to this Complaint, together with an equal amount as liquidated damages.

2 **JURISDICTION AND VENUE**

3 4. This Court has subject matter jurisdiction of this action under Sections 16 and 17 of
4 the FLSA, 29 U.S.C. §§ 216, 217. This Court also has subject matter jurisdiction of this action
5 under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1345 (United States as plaintiff).

6 5. Venue lies in the United States District Court for the Eastern District of California,
7 pursuant to 28 U.S.C. § 1391(b), because the events giving rise to the claims occurred within this
8 District. Venue lies with the Sacramento Division, pursuant to Local Rule 120(d), because the
9 events giving rise to the claims occurred in Sacramento County and Placer County, California.

10 **DEFENDANTS ARE EMPLOYERS UNDER THE FLSA**

11 **Defendant Che Garibaldi**

12 6. Defendant Che Garibaldi dba Taqueria Garibaldi (“Garibaldi”) is a California
13 corporation with a principal office address at 1841 Howe Avenue, Sacramento, California 95825.
14 Defendant Garibaldi operates as a chain of restaurants located at (a) 1841 Howe Avenue,
15 Sacramento, California 95825 (“Howe restaurant”); (b) 3425 El Camino Avenue, Sacramento,
16 California 95821 (“El Camino restaurant”); and (c) 10000 Fairway Drive #110, Roseville, California
17 95678 (“Roseville restaurant”). Defendant Garibaldi employed workers, including the employees
18 named in Exhibit A, who are employed as managers, cooks, cashiers, servers, bartenders, and
19 dishwashers.

20 7. At all times relevant, Defendant Garibaldi is and has been an employer within the
21 meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), in relation to the employees listed on
22 Exhibit A to this Complaint, and all other employees not yet known to the Secretary whom he later
23 identifies.

24 **Defendant Eduardo Hernandez**

25 8. Defendant Eduardo Hernandez (“Hernandez”), an individual, resides in Placer
26 County, California. He is an agent and owner of Garibaldi.

27 9. At all times relevant, Defendant Hernandez acted directly and indirectly in the interests
28 of Garibaldi in relation to their employees, including determining employment practices.

10. Defendant Hernandez is individually liable as an employer under Section 3(d), 29 U.S.C. § 203(d), for back wages and liquidated damages owed to employees of Defendant Garibaldi.

11. The claims against Defendant Hernandez in this case arise out of and are directly related to his business activities in the jurisdiction of this Court.

Defendant Hector Manual Martinez Galindo

12. Defendant Hector Manual Martinez Galindo (“Martinez”), an individual, resides in Sacramento County, California. He is an agent and owner of Garibaldi.

13. At all times relevant, Defendant Martinez acted directly and indirectly in the interests of Garibaldi in relation to their employees, including determining employment practices.

14. Defendant Martinez is individually liable as an employer under Section 3(d), 29 U.S.C. § 203(d), for back wages and liquidated damages owed to employees of Defendant Garibaldi.

15. The claims against Defendant Martinez in this case arise out of and are directly related to his business activities in the jurisdiction of this Court.

Defendant Alejandro Rodriguez

16. Defendant Alejandro Rodriguez (“Rodriguez”), an individual, on information and belief resides in Sacramento County, California. He is the general manager at the Howe restaurant and agent of Garibaldi.

17. At all times relevant, Defendant Rodriguez acted directly or indirectly in the interests of Garibaldi in relation to its employees, including hiring, firing, disciplining employees, determining work schedules and employment practices.

18. Defendant Rodriguez is individually liable as an employer under Section 3(d), 29 U.S.C. § 203(d), for back wages and liquidated damages owed to employees of Defendant Garibaldi.

19. The claims against Defendant Rodriguez in this case arise out of and are directly related to his business activities within the jurisdiction of this Court.

Defendants are an Enterprise Covered by the FLSA

20. At all times relevant Defendants Hernandez and Martinez owned, operated, and controlled Garibaldi and directed Defendant Rodriguez to act directly or indirectly in the interests of Garibaldi for the common business purpose of providing full-service restaurants in Sacramento

1 and Placer counties. As a result, Defendants are and have been an “enterprise,” as defined in FLSA
2 § 3(r), 29 U.S.C. § 203(r), with business activities that are related and performed through unified
3 operation or common control for a common business purpose.

4 21. At all relevant times, two or more employees of Defendants have regularly and
5 routinely handled or otherwise worked on goods or materials that have been moved in or produced
6 for commerce, including food products and beverages.

7 22. At all relevant times, Defendants’ enterprise had an annual gross volume of sales
8 made or business done of not less than \$500,000.00 (exclusive of excise taxes at the retail level that
9 are separately stated).

10 23. As a result, Defendants’ employees are and at all times relevant have been employees
11 in an enterprise engaged in commerce or in the production of goods for commerce, within the
12 meaning of Section 3(s) of the FLSA, 29 U.S.C. § 203(s).

13 **FACTS COMMON TO ALL CAUSES OF ACTION**

14 **I. Defendants Deprive Their Employers the Wages They Earned.**

15 24. Defendants employ approximately twenty or more employees at any given time. A
16 number of employees work over forty hours per week, some working over twelve hours per day.
17 Defendants hired several employees to work in one position, but expect employees to perform a
18 multitude of tasks once employed. For example, employees hired as servers, were also instructed to
19 cut vegetables; prepare meals; clean floors, windows, mirrors, and the bathroom; and operate as the
20 cashier.

21 25. During the Subject Period and on an ongoing basis, Defendants maintain an
22 intentional and regular practice of paying employees by check for work performed of forty hours or
23 fewer per week and pay employees by cash for hours worked over forty per week.

24 26. During the Subject Period and on an ongoing basis, Defendants kept tips received by
25 its employees, including for the purpose of allowing managers or supervisors to keep a portion of
26 employees’ tips.

27 27. During the Subject Period and on an ongoing basis, Defendants have failed to pay a
28 rate of one and one-half times the regular rate for work performed in excess of forty hours per week.

1 28. During the Subject Period and on an ongoing basis, Defendants have failed to record
2 and maintain accurate records of hours worked by and wages paid to their employees.

3 29. Defendants continue their practices of underpaying their employees and failing to
4 maintain accurate records of hours worked and wages paid.

5 **II. Defendants Impeded on the Secretary's Investigation of FLSA Compliance.**

6 30. In 2021, on behalf of the Secretary, the Wage and Hour Division of the U.S.
7 Department of Labor ("WHD") began an investigation into the wage and hour practices of Garibaldi.

8 31. As soon as the Defendants were notified of the investigation, but before WHD had
9 the opportunity to visit the worksites and speak with employees, Defendants verbally instructed
10 workers to communicate to WHD investigators that employees only worked forty hours a week and
11 eight hours a day, were provided two days off and thirty-minute breaks, and were paid only in
12 checks. Defendants reminded employees on several occasions of these instructions. Defendants
13 warned employees that if Defendants had to pay overtime premiums by check, then employees
14 would lose more money in taxes. Defendants further insisted on a quid pro quo, communicating to
15 employees that because Defendants provided them with wages and jobs, then they should provide
16 Defendants with the favor of misleading WHD as instructed.

17 32. Upon learning about the investigation, Defendants instructed employees to stop
18 using uAttend, a time clock located in all three restaurant locations that digitally recorded hours
19 worked. Instead, Defendants instructed employees to record forty-hour workweeks on a yellow
20 timecard, which would be sent to a third-party payroll company to process checks. Defendants
21 instructed employees to record hours worked over forty on a separate piece of paper so that
22 Defendants could calculate cash payments at a straight-time rate for these hours. Defendants
23 communicated to employees that hours and pay had to be processed this way because the uAttend
24 machines were broken at all three restaurant locations.

25 33. While the Secretary's investigation was ongoing, Defendants provided employees,
26 who had recorded hours in excess of forty on the yellow timecards, with a new stack of timecards
27 to retroactively write forty-hour workweeks for past pay periods. For some employees, the number
28 of timecards that Defendants instructed them to rewrite was so extensive that employees had to

1 continue rewriting the timecards after work hours and at their homes.

2 **III. Defendants Interfered with FLSA Rights.**

3 34. By interfering in the Secretary's investigation by pressuring employees not to
4 provide accurate information to the Secretary and delaying the Secretary's discovery of Defendants'
5 FLSA violations of the FLSA, Defendants have retaliated against employees seeking rightful wages
6 and tips by depriving, interfering, and impeding the ability of employees, and derivatively, of the
7 Secretary, to detect the basic circumstances of their employment and of their rights under the FLSA,
8 including the right to notify the Secretary of Labor of FLSA violations.

9 **CLAIMS FOR RELIEF**

10 **FIRST CLAIM FOR RELIEF**

11 **Overtime Violations**

12 35. The Secretary realleges and hereby incorporates by reference the foregoing
13 paragraphs as though fully set forth herein.

14 36. Defendants violated and continue to violate Section 7 and 15(a)(2) of the FLSA, 29
15 U.S.C. §§ 207, 215(a)(2), by employing their employees engaged in commerce or in an enterprise
16 engaged in commerce, for workweeks longer than forty hours without compensating the employees
17 for all their employment in excess of forty hours in such workweeks at rates not less than one and
18 one-half the regular rates at which they were employed.

19 37. At all relevant times, Defendants have willfully violated and continue to violate
20 Sections 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2). Defendants knew or should
21 have known of the FLSA's overtime requirements but nevertheless employed, and continue to
22 employ, workers without properly compensating them.

23 **SECOND CLAIM FOR RELIEF**

24 **Tip Violations**

25 38. The Secretary realleges and hereby incorporates by reference the foregoing
26 paragraphs as though fully set forth herein.

27 39. Defendants violated and continue to violate Section 3(m)(2)(B) and 16(e)(2) of the
28 FLSA, 29 U.S.C. §§ 203(m)(2)(B) and 216(e)(2), by keeping tips received by its employees,

1 including for the purpose of allowing managers or supervisors to keep a portion of employees' tips.

2 40. At all relevant times, Defendants have willfully violated and continue to violate
3 Sections 3(m)(2)(B) and 16(e)(2) of the FLSA, 29 U.S.C. §§ 203(m)(2)(B) and 216(e)(2).
4 Defendants knew or should have known of the FLSA's tip requirements but continue to collect tips
5 earned by employees.

6 **THIRD CLAIM FOR RELIEF**

7 **Recordkeeping Violations**

8 41. The Secretary realleges and hereby incorporates by reference the foregoing
9 paragraphs as though fully set forth herein.

10 42. Defendants have violated and continue to violate Sections 11(c) and 15(a)(5) of the
11 FLSA, 29 U.S.C. §§ 211(c) and 215(a)(5), by failing to maintain, keep, make available (to the
12 Secretary's agents for inspection, transcription, and/or copying), and preserve accurate records of
13 all employees and of the wages, hours, and other conditions and practices of employment
14 maintained, as prescribed by 29 C.F.R. part 516.

15 43. At all relevant times, Defendants have willfully violated and continue to violate
16 Sections 11(c) and 15(a)(5) of the FLSA, 29 U.S.C. §§ 211(c) and 215(a)(5). Defendants have
17 created and continue to create and maintain inaccurate and incomplete records of employees' hours
18 worked and wages paid, even though they knew or should have known that this conduct violates the
19 FLSA.

20 **FOURTH CLAIM FOR RELIEF**

21 **Interference with FLSA Rights**

22 44. The Secretary realleges and hereby incorporates by reference the foregoing
23 paragraphs as though fully set forth herein.

24 45. Defendants have willfully and repeatedly violated the provisions of Section 15(a)(3)
25 of the FLSA, 29 U.S.C. § 215(a)(3), and Section 11(a) of the FLSA, 29 U.S.C. § 211(a), by
26 depriving, interfering and impeding the ability of Employees, and derivatively, of the Secretary of
27 Labor, to detect the basic circumstances of their employment and of their rights as employees under
28 the FLSA, including the right to notify the Secretary of Labor of FLSA violations. Defendants

1 further interfered in the Secretary's investigation by pressuring employees not to provide accurate
2 information to the Secretary and further delaying the Secretary's discovery of Defendants violations
3 of the FLSA.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, good cause having been shown, the Secretary prays for judgment against
6 Defendants as follows:

7 A. For an Order:

- 8 1. Under Section 17 of the FLSA, 29 U.S.C. § 217, permanently enjoining and
9 restraining Defendants, their officers, agents, servants, employees, and those
10 persons in active concert or participation with them from prospectively violating
11 the FLSA including: Section 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and
12 215(a)(2); Sections 3(m)(2)(B) and 16(e)(2) of the FLSA, 29 U.S.C. §§
13 203(m)(2)(B) and 216(e)(2); Sections 11(c) and 15(a)(5) of the FLSA, 29 U.S.C.
14 § 211(c) and 215(a)(5); and Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3).
15 2. Under Section 17 of the FLSA, 29 U.S.C. § 217, permanently enjoining and
16 restraining Defendants, their officers, agents, servants, employees, and those
17 persons in active concert or participation with them from prospectively violating
18 the anti-retaliation provisions of Section 15(a)(3) of the Act, 29 U.S.C. §
19 15(a)(3).

20 B. For an Order:

- 21 1. Under Section 16(c) of the FLSA, 29 U.S.C. § 216(c) finding Defendants liable
22 for all wages due, including overtime and tip compensation, from at least May
23 7, 2018 through the present to all Defendants' employees including the
24 employees listed in attached Exhibit A and other employees not presently known
25 to the Secretary, and an additional equal amount as liquidated damages; or
26 2. In the event liquidated damages are not awarded, under Section 17 of the FLSA,
27 29 U.S.C. § 217, enjoining and restraining Defendants and their officers, agents,
28 servants, employees, and those persons in active concert or participation with

1 Defendants, from withholding payment of unpaid back wages found to be due
2 from at least May 7, 2018 through the present to Defendants' employees, and
3 pre-judgment interest at an appropriate interest rate;

4 C. For an Order directing Defendants to issue a curative notice to their employees that
5 rectifies their FLSA violations, including notifying employees of their rights under
6 the FLSA, under any injunction, judgment, or order in this action, and this lawsuit;

7 D. For an Order providing such further legal and equitable relief as may be deemed
8 necessary or appropriate, including equitable tolling of the applicable three-year
9 statute of limitations to redress interference with, or delayed detection of, the
10 violations of the FLSA by the Secretary due to Defendants' actions to confuse the
11 workers as to their rights under the FLSA and/or to intimidate or coerce them from
12 exercising their rights and status as an employee, and failure; and

13 E. For an Order awarding the Secretary the costs of this action.

14 F. For an Order awarding the Secretary any other relief that the Court deems necessary
15 and appropriate.

16
17 May 4, 2022

Respectfully submitted,

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19 SEEMA NANDA
Solicitor of Labor

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21 MARC A. PILOTIN
Regional Solicitor

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23 BORIS ORLOV
Counsel for Wage and Hour

24 /s/ Jennifer L. Sta.Ana

25 JENNIFER L. STA.ANA
26 Trial Attorney

EXHIBIT A

	LAST NAME	FIRST NAME
1		
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3	Aguilera	Francisco
4	Alcantara	Daniel
5	Angulo	Jonathan
6	Ayala	Lilian
7	Azuera Cadenas	Joycee
8	Banuelos	Maria
9	Barba	Vanessa
10	Calel	Carlos
11	Carmona	Juan Carlos
12	Casta	Noelia
13	Chavez	Ernesto
14	Delgado Linares	Carla
15	Esquivel	Eder
16	Gonzalez	Fabiola
17	Guzman	Alfredo
18	Hernandez	Iris
19	Lagos	Alexander
20	Laguna Gonzalez	Christopher
21	Lopez Tiempo	Alejandro
22	Lopez Vasquez	Maria Guadalupe
23	Magallanes	Maria Bertha
24	Melera	Maricela
25	Melgar	Wendy
26	Mendez	Juventino
27	Mendieta	Sonia
28	Meneses	Hector

1	Montiel Martinez	Juana
2	Nava-Corona	Rosa
3	Parra	Maria
4	Perez	Kenedi
5	Quintana	Elena
6	Ruiz	Leilani
7	Saenz	Edgar
8	Saenz	Lesly
9	Sanchez	Ricardo
10	Sanchez	Jacinta
11	Tecum Morales	Julio
12	Vargas	Mynor
13	Vazquez	Horacio
14	Zamora	Marcelino

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